

Court of Appeal Criminal Appeal Rules (2002)

COURT OF APPEAL PRACTICE NOTE CAPN No. 2012-01

DATE ISSUED: January 11, 2012

**RELEVANT
PROVISIONS**

AFFECTED: *Criminal Code*, section 677, Criminal Appeal Rule 26

EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the Office of the Registrar, as Secretary of the Rules Committee of the Court of Appeal, and is published pursuant to Rule 27 of the *Supreme Court of Newfoundland and Labrador – Court of Appeal Criminal Appeal Rules (2002)* and Rule 57.31(3) of the *Rules of the Supreme Court, 1986*. **Note:** This Practice Note applies exclusively to the *Supreme Court of Newfoundland and Labrador – Court of Appeal Criminal Appeal Rules (2002)*.

Formal Orders – Dissenting Opinions in Criminal Appeals

Background and Purpose

1. The *Supreme Court of Newfoundland and Labrador – Court of Appeal Criminal Appeal Rules (2002)* do not currently prescribe the form of the formal order to be filed recording the result of an appeal in a criminal matter.
2. Section 677 of the *Criminal Code*, however, provides:

677. Where a judge of the court of appeal expresses an opinion dissenting from the judgment of the court, the judgment of the court shall specify any grounds in law on which the dissent, in whole or in part, is based.
3. The apparent purpose of s. 677 is to show the dissenting opinion on the face of the formal judgment being appealed since a dissent on a question of law may lead to an appeal to the Supreme Court of Canada, as of right.
4. Rule 33 of the *Rules of the Supreme Court of Canada*, SOR/2002-156 provides, in relevant part:

33. A notice of appeal under paragraph 60(1)(a) of the Act shall

(c) in the case of an appeal under paragraphs 691(1)(a), 691(2)(a) or (b), 692(3)(a) or 693(1)(a) of the *Criminal Code*, set out the questions of law, including the question of law on which the dissenting judgment of the court appealed from is, in whole or in part, based, and include as a schedule to the notice of appeal a copy of the judgment and reasons for judgment appealed from;

5. The responsibility for the preparation of a formal order recording the result of an appeal is, in the first instance, the responsibility of counsel. Rule 26 of the *Supreme Court of Newfoundland and Labrador – Court of Appeal Criminal Appeal Rules (2002)* states:

26. (1) On a decision having been filed or deemed filed, an order shall be prepared by the appellant or may be prepared by any party stating the disposition of the appeal as directed by the Court and served on the opposite party. The order shall be approved by the judge who acted as chairperson of the appeal panel, or in the absence of that judge, the next senior judge on the panel, and shall be signed by and filed with the Registrar, who shall then notify all parties of the filing.

26(2) Any party to an appeal who wishes the order amended to express better the intent of the decision of the Court may apply to the Court, which may correct or otherwise amend the formal order, and the amended order shall then without a change of date, be signed and entered by the Registrar as the formal order disposing of the appeal.

6. The practice of counsel has not always been consistent with respect to the inclusion of a reference to dissenting opinions in draft orders.
7. It is therefore considered appropriate to issue this Practice Note to remind parties and their counsel that the foregoing provisions must be complied with.

Practice Note

8. Parties and their counsel who draft formal orders following an appeal in a criminal matter must ensure that those draft orders comply with section 677 of the *Criminal Code*, i.e. they must specify any grounds in law on which the dissent, in whole or in part, is based.

9. Before submitting the draft order to the Court for filing, the drafting party must, in accordance with Rule 26, provide a copy of the draft to the other party. If the other party approves of the form of the order, he or she must signify approval on the draft before it is submitted for filing. If the other party objects to the form of the draft order, he or she shall advise the drafting party in writing of the nature of the objection and if the drafting party does not agree, the draft together with the objection shall be submitted to the Court. If the other party does not indicate, within a reasonable time, whether he or she agrees or disagrees with the form of the draft, the drafting party may submit the draft to the Court together with a note to that effect. Where a party is not represented by counsel, counsel for the Crown shall be responsible for drafting the order.
10. Orders that do not comply with s. 677 or are otherwise not appropriate may be rejected by the Registry staff and will not be approved by the responsible judge from the appeal panel. The drafting party will be asked to amend the draft order.
11. Where the drafting party has failed to specify any grounds in law on which the dissent, in whole or in part, is based and, by reason of error or inadvertence, the order is nevertheless approved and filed in the Court, the opposite party or parties should apply to the Court as soon as possible, pursuant to rule 26(2), to have the order amended.

Authorized by:

Chief Justice of Newfoundland and Labrador
Supreme Court of Newfoundland and Labrador
Court of Appeal

Debbie Brennan, Deputy Registrar
(for the Registrar of the Supreme Court of
Newfoundland and Labrador
Secretary, Rules Committee of the Court of Appeal)